

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MARIA HILDA GONZALEZ,

Plaintiff and Respondent,

v.

FRANCISCO GRANADENO et al.,

Defendant and Appellant.

B197109

(Los Angeles County
Super. Ct. No. VC044096)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Patrick T. Meyers, Judge. Affirmed.

Manning & Marder, Kass, Ellrod, Ramirez; Fredric W. Trester, Rinat B. Klier-
Erlich and Steven J. Renick, for Defendants and Appellants.

Law Offices of Speros P. Maniates and Speros P. Maniates; Esner, Chang & Ellis,
Stuart B. Esner and Andrew N. Chang, for Plaintiff and Respondent.

Defendants Francisco and Carmen Argelia Granadeno appeal from the judgment entered following a bench trial where the court found that the Granadenos anticipatorily breached a contract to split the profits from the sale of a home with plaintiff Maria Hilda Gonzalez. We affirm.

FACTS AND PROCEDURAL HISTORY

Maria Hilda Gonzalez sued her former employers, Francisco and Carmen Granadeno, for anticipatory breach of an oral agreement to split the profits from the sale of a home built by the Granadenos on land Gonzalez transferred to them as part of their deal.¹ After a bench trial, the court found that the Granadenos had anticipatorily breached the agreement when they found a buyer for the property, failed to notify Gonzalez, and otherwise tried to complete the transaction without her participation or knowledge. Because the sale never went through, the court imposed an equitable lien for Gonzalez on the property that would provide her half the proceeds from any future sale or rental of the property.

The primary issue on appeal is whether there is sufficient evidence that the Granadenos' conduct amounted to a repudiation of the agreement with Gonzalez.² Viewing the evidence most favorably to the judgment under the applicable substantial evidence standard of review (see *Donovan v. Poway Unified School Dist.* (2008) 167 Cal.App.4th 567, 581-582), it appears that Gonzalez was a real estate agent who

¹ Gonzalez's operative second amended complaint included causes of action against the Granadenos for rescission and to quiet title. Both causes of action were dismissed after the trial court summarily adjudicated them in the Granadenos' favor. Gonzalez also sued Francisco Granadeno for workplace sexual harassment. That part of the trial court's judgment has not been challenged on appeal. Francisco Granadeno cross complained against Gonzalez for libel and slander. The trial court found for Gonzalez on those claims, and that portion of the judgment is also unchallenged.

² We will therefore focus our statement of facts on the evidence pertinent to that issue, while describing the other facts surrounding the events with just enough specificity to provide context. Our statement of facts is taken from the unchallenged factual findings in the trial court's statement of decision.

went to work in 2001 at the real estate brokerage firm owned and operated by the Granadenos.³ Gonzalez owned a small, run-down house on a nearly one-third acre lot in Downey but was more than \$17,000 behind on her mortgage payments on the property. Sometime earlier Gonzalez had plans drawn up to build a larger, new house on the property and sell it for a profit. Within a few months of starting her job with the Granadenos, she and Francisco Granadeno entered an oral agreement to jointly develop the project.⁴ As described by Gonzalez, she transferred title to the property to the Granadenos through a gift deed. In exchange, Granadeno would bring her mortgage payments current, make all future mortgage payments, and pay the construction costs for the new house. When it was sold, they would split the profits 50-50. Gonzalez did not notify her lender that she had transferred title and payments were made in her name.

The new home was completed in June 2004. In or about March 2005, Granadeno fired Gonzalez. Sometime in 2005, an escrow officer who worked for the Granadenos told Gonzalez that an escrow had opened for the sale of the property. The sales price was \$1,075,000. That escrow officer had been told by Granadeno not to work on that file. After learning of the pending sale, Gonzalez contacted the lender and the title company in order to stop the sale. As a result, the transaction never concluded. In May 2005, the Granadenos moved into the property. Gonzalez later learned that two letters concerning the payoff of her mortgage on the property – each bearing her forged signature – had been sent by the escrow company to her lender in connection with the aborted sales transaction. According to Gonzalez, after learning of the pending sale, she never spoke with Granadeno, although she did leave a voice mail message asking about her share of the profits.

³ The Granadenos' firm was Chico's Power, Inc., dba Century 21Powerhouse Realty.

⁴ We will hereafter refer to Francisco Granadeno by his last name only.

The Granadenos contend there was insufficient evidence that they repudiated the contract with Gonzalez, meaning that no anticipatory breach occurred. As a result, they ask us to reverse the judgment on the breach of contract cause of action.⁵ They also contend: the trial court lacked jurisdiction to award a constructive trust; the terms of the trust set forth in the judgment went beyond the scope of the trial court's statement of decision; and the judgment must be reversed as to Carmen Granadeno because she was not a party to the joint venture agreement.

DISCUSSION

1. *There Was Sufficient Evidence of an Implied Repudiation*

An anticipatory breach of contract occurs when one party to a bilateral contract either expressly or impliedly repudiates the agreement. An express repudiation is a clear, positive, unequivocal refusal to perform. An implied repudiation results from conduct where the promisor puts it out of his power to perform so as to make substantial performance of his promise impossible. (*Martinez v. Scott Specialty Gases, Inc.* (2000) 83 Cal.App.4th 1236, 1246, citing *Taylor v. Johnston* (1975) 15 Cal.3d 130, 137.)

In its statement of decision, the trial court found that the Granadenos “breached the agreement by their self-dealing efforts to ‘palm off’ the transaction [by which they obtained title to the property from Gonzalez] as a real property sale to them by [Gonzalez].”⁶ The Granadenos contend there was no evidence to support a finding of an express repudiation because Granadeno never made statements amounting to an express repudiation before Gonzalez sued. A finding based on an implied repudiation must be reversed, they contend, because a sale of the property and a division of the profits is still

⁵ They do not contest the trial court's findings concerning their conduct, that a contract existed, or that the contract terms were other than as described by Gonzalez.

⁶ Even though the trial court found that Carmen Granadeno was not a party to the contract, it also found that her liability on the breach of contract cause of action was proper because she was an indispensable party. (Code Civ. Proc., § 389.) We discuss this issue *post*.

possible, as evidenced by the trial court's decision to impose an equitable lien on any future sales proceeds. Gonzalez does not address the implied repudiation issue, but contends there is sufficient evidence to support a finding of express repudiation.

We begin by noting that the court's statement of decision became final when neither party objected to the trial court's tentative statement of decision. As a result, all ambiguities in the statement of decision are waived, and we will imply all necessary findings to support the statement of decision that are supported by substantial evidence. (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 59-60; *SFPP, L.P. v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.)

Overlooked by both parties is a portion of the statement of decision devoted to the legal principles the trial court believed were applicable. When discussing why the oral property development agreement was not barred by the Statute of Frauds, the court relied on the law governing joint ventures. When an oral joint venture agreement is created, the parties become fiduciaries, the trial court said, which "may entitle a joint venturer to equitable remedies for breach of fiduciary relationship, including imposition of a constructive trust or equitable lien." Cited for this proposition was *Epstein v. Stahl* (1959) 176 Cal.App.2d 53 (*Epstein*). In a case involving a joint venture agreement to renovate and resell real property, the *Epstein* court held that joint venturers become fiduciaries and that none may acquire the subject property to the exclusion of the others even if the acquiring party bought the property with his own funds. A joint venturer who does so, the appellate court held, holds the property as a trustee for the other joint venturers. (*Epstein, supra*, at pp. 57-58.) Because the trial court went on to impose a constructive trust in favor of Gonzalez, we conclude it made an implied finding that Granadeno breached a joint venture agreement.⁷ As set forth below, this will have a profound influence on how we evaluate the evidence of repudiation.

⁷ Gonzalez characterized the agreement as a joint venture in her opposition to the Granadenos' partially successful summary judgment motion and during her opening statement.

It has long been held that a joint venturer who acquires property intended for the joint venture is subject to a constructive trust on the property in favor of the venture. (*Leff v. Gunter* (1983) 33 Cal.3d 508, 514; *Koyer v. Willmon* (1907) 150 Cal. 785, 787-788.) A joint venturer wrongfully repudiates the joint venture agreement by converting the joint venture assets to his own use. (See *Gherman v. Colburn* (1977) 72 Cal.App.3d 544, 564-565.) Where one joint venturer wrongfully acquires joint venture property in his own name, the other joint venturer “may bring an action to impose a constructive trust and require the wrongdoing . . . joint venturer to convey the appropriate share of the legal title. [Citations.]” (*BGJ Associates v. Superior Court* (1999) 75 Cal.App.4th 952, 970.)

Based on these authorities, we have no doubt that Granadeno repudiated the joint venture agreement when he tried, but failed, to covertly sell the property, then moved into the house he was obligated to sell on behalf of the joint venture.⁸ Although this conduct might not have qualified as an express repudiation because it did not involve positive statements by Granadeno, there is no doubt that an implied repudiation occurred. The only sticking point is whether this made it impossible for Granadeno to ever perform his joint venture obligations.

According to Granadeno, his ability to perform his joint venture obligations is still possible because he has the power to sell the property, at which time the profits can be split with Gonzalez. However, there was no evidence at trial that Granadeno ever intended to sell the property. Instead, he maintained at trial that he was the sole owner and testified that there was no escrow then open on the property. We do not believe that Granadeno can escape the consequences of his conduct by reliance on some abstract and speculative possibility that he might someday perform. In fact, an implied repudiation occurs when the repudiating party’s conduct has made it actually *or apparently* impossible for him to perform. (*Central Valley General Hospital v. Smith* (2008)

⁸ That sale was, of course, lost. A reasonable inference from the evidence is that if Granadeno had not tried to seize the joint venture opportunity for himself, thus prompting Gonzalez to intercede with the escrow, a joint venture sale of the house would have gone through.

162 Cal.App.4th 501, 514, fn. 4, citing Rest.2d Contracts, § 250, com. c., p. 274.) That the Granadenos moved into and continued to live in the property after the scheme to sell it as their own failed, combined with the absence of evidence that it would ever be put up for sale, is sufficient evidence that it was apparently impossible for Granadeno to perform his joint venture obligations.⁹

2. *A Constructive Trust Was an Authorized Remedy*

The Granadenos contend that the trial court lacked the power to award the remedy of a constructive trust on the property because Gonzalez brought an action at law for breach of contract damages and never requested equitable relief. We disagree. First, the old forms of action in equity or at law have been abolished and a plaintiff is entitled to any relief, legal or equitable, that is consistent with the facts stated in the complaint. (*Bank of America Nat. Trust & Savings Assn. v. Gillett* (1940) 36 Cal.App.2d 453, 455; 30 Cal.Jur.3d, Equity, § 54.)¹⁰ As discussed above, this was an action for breach of a particular type of contract: a joint venture agreement to split the profits from the sale of real property. As also discussed above, a joint venturer who has been excluded from the joint venture property by another joint venturer's wrongful acquisition of the property for himself is entitled to seek a constructive trust on the property. (*BGJ Associates v. Superior Court*, *supra*, 75 Cal.App.4th at p. 970.) In addition to money damages, Gonzalez's complaint asked for such other and further relief as the trial court deemed

⁹ This holding makes it unnecessary for us to reach the Granadenos' companion contention that it was Gonzalez, not they, who terminated the agreement when she stepped in to stop the sale of the property. (See footnote 8, *ante*.) We also asked the parties for supplemental briefing as to whether we could hold that the trial court in fact found an actual as opposed to an anticipatory breach of contract, and as to whether we could view the trial court's judgment as one for declaratory relief. Because we hold that an implied repudiation occurred, we need not reach those issues either.

¹⁰ Accordingly, we reject as an unexplained anomaly the decision in *Hise v. Superior Court* (1943) 21 Cal.2d 614, 624-625, which held that an award of equitable relief was proper because the record did not show that the plaintiff failed to state a claim for such relief.

proper. We therefore hold that the trial court acted properly by awarding a constructive trust on the property.

3. Objections to the Judgment Were Waived

The Granadenos contend that the trial court erred by adding to the judgment certain conditions that were not part of its statement of decision: That Gonzalez was entitled to her share of not just the sale of the property, but its lease or any other transfer; and that the Granadenos give at least 60 days notice before any proposed transfer. Neither condition was found in the parties' respective proposed judgments, which were rejected by the court after each party objected to the other's. Instead, it appeared for the first time in the court's own proposed judgment, which was fashioned after the court rejected the parties' proposals. No objections were made to the court's proposed judgment. As a result, the Granadenos have waived their objections.¹¹ (Cal. Rules of Court, rule 3.1590 (f).)

4. Carmen Granadeno Was a Properly Joined Party

Even though Carmen Granadeno had no involvement in any of the transactions and was not a party to the joint venture agreement, the trial court found in its statement of decision that she was an indispensable party. (Code Civ. Proc., § 389.)¹² Under section 389, an indispensable party is one whose rights will necessarily be affected by a judgment. (*Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 808-809.) The trial court could order the joinder of such a party on its own motion. (*Loock v. Pioneer Title Ins. & Trust Co.* (1935) 4 Cal.App.2d 245, 249.) Carmen Granadeno acknowledges that she will necessarily be affected by the constructive trust, but contends this did not make her an

¹¹ Were we to reach the issue, however, we would likely conclude that these were reasonable conditions necessary to enforce the constructive trust.

¹² We will refer to Code of Civil Procedure section 389 as section 389.

indispensable party because Gonzalez asked for money damages only and the trust did not come into existence until judgment was entered. She is wrong.

First, a party need not have at stake a vested contractual right to be found an indispensable party. Second, the trial court is not limited to considering only those circumstances in existence when the complaint was filed. Instead, indispensability may be determined by considering the status of the parties at the time relief is to be entered, or at the time the issue of indispensability is raised. (*County of Imperial v. Superior Court* (2007) 152 Cal.App.4th 13, 36-37.) As far as we can tell, Carmen Granadeno never objected that she was not a proper party to the contract cause of action, even after the trial court first raised the issue in the statement of decision. Because her rights were necessarily affected at the time relief was to be entered, the trial court did not err and she was in fact properly joined as a party.

DISPOSITION

For the reasons set forth above, the judgment is affirmed. Respondent shall recover her appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

BIGELOW, J.